

## **Summary of Legislative Bill 1083**

**Passed by the Legislature and Signed by the Governor 4-14-04**

### Sections 1-20

#### *Nebraska Behavioral Health Services Act*

#### Section 1: Name of Act

#### Section 2: Purposes of Act

Section 3: Purposes of the Public Behavioral Health System: public safety, statewide access, high quality services, cost-effective services

Section 4: Definitions: administrator, behavioral health disorder, behavioral health region, behavioral health services, community based behavioral health services, department, director, division, Nebraska Health and Human Services System, Policy Cabinet, Public Behavioral Health System, Regional Center, Regional Center services

Section 5: Establishes new Division of Behavioral Health Services; Administrator appointed by Governor and report to Director of HHS; Director to appoint Chief Clinical Officer, Program Administrator for Consumer Affairs; Chief Clinical Officer shall be board-certified psychiatrist and shall serve as medical director for division and all facilities and programs operated by division; Program Administrator for Consumer Affairs shall be consumer of former consumer and have specialized knowledge, experience or expertise relating to consumer-directed behavioral health services, systems and advocacy; Chief Clinical Officer and Program Administrator shall report to Administrator of Division; Governor and Director of HHS shall conduct search for qualified candidates; Administrator shall establish office of Consumer Affairs within Division

Section 6: Division is chief behavioral health authority for state and shall direct the administrator and coordination of public behavioral health system including (but not limited to): administration and management of division, regional centers and any facilities and programs operated by division; integration, coordination and planning, oversight of regional authorities; budgets, audits; development and management of data systems; prioritization and approval of all expenditures, methodologies for behavioral health services and fees paid; cooperation with Department in licensure and regulation of behavioral health

professionals, programs and facilities; cooperation with Department's Finance and Support in provision of behavioral health services under Medicaid; promotion of research and education to improve quality of services, recruitment and retention of behavioral health professions and access to services; department shall adopt rules and regulations to carry out act

Section 7: Re-establishes Six behavioral Health regions

Section 8: Regional behavioral health authority operation; governance under regional board consisting of one county board member from each county in region; board shall appoint regional administrator and be responsible for administration and management of authority; each authority shall establish a regional advisory committee consisting of consumers, providers and other interested parties and may establish other task forces, subcommittees as deemed necessary; each county in region shall provide funding equal to \$1 for every \$3 from the state's General Fund; at least 40% of region's funding shall come from local and county tax revenue with remainder from other nonfederal sources; general funds transferred from regional centers for community based services after operative date of this section shall be excluded from any calculation of county match funds

Section 9: Each regional authority is responsible for administration and management of services per rules and regulations adopted by HHS including the following: integration and coordination of public system, planning for an appropriate array of services; submission for approval by division of budget and plan; submission of annual reports and other report as required; initiation and oversight of contracts; coordination with division in conducting audits; except for services operated prior to operative date of this section, no regional behavioral health authority shall provide services funded in whole or in part with revenue received and administered by division unless there is a public competitive bidding process, there are no qualified and willing providers, and The regional authority complies with all applicable rules and regulations including definitions of conflicts of interest and procedures should conflicts arise; if region provides services directly they must maintain a separate budget and separately account for all revenue and expenditures

Section 10: New Division responsibilities; may reduce or discontinue regional center service only if appropriate community based services or other regional center services are available for every person current receiving care; services must have sufficient capacity and capability to replace any discontinued services; division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services; Behavioral Health Oversight Commission of the Legislature shall review documentation and report to Governor and Health and Human Services Committee regarding its opinion as to whether requirements have been met; as regional center services are reduced or discontinued, the division shall make corresponding reductions in personnel and other expenditures ; all funding reductions shall be reallocated and expended by division for the continued development of community based services; division may establish state-operated community based services to replace regional center services; division shall provide regional center employees with appropriate training and support to transition into positions as may be necessary for state operated services; when occupancy of licensed psychiatric beds of any regional center reaches 20% of less of capacity on March 15, 2004, the division shall notify Governor and Legislature; after approval of a majority of members of the Executive Board of the Legislative Council the division may provide for the transfer of all remaining patients to appropriate community based services or another regional center and cease the operation of that regional center; this section does not require further authorization or enabling legislation

Section 11: Division coordinates funds appropriated by legislature or otherwise received by HHHS from any public or private sources designated by Policy Cabinet for provision of behavioral health services

Section 12: Establishes Behavioral Health Services Fund; administered by division and would contain cash funds appropriated by legislature or otherwise received by HHS for behavioral health services; funds directed by Policy Cabinet or Legislature; fund to be used to encourage and facilitate statewide development of community based services including the provision of grants, loans and other assistance and for reimbursement to provides for services

Section 13: Creates the State Behavioral Health Council; consists of 10 members of State Advisory Committee on Mental Health Services; 10 members of State Advisory Committee on Substance Abuse Services and 10 members of State Advisory Committee on Problem Gambling and Addiction Services; Governor to appoint 3 members from each committee to serve on council and committee shall select 7 of its members to serve on council; staggered 3 year terms without compensation except expenses; council to provide advise and assistance to division and promote interests of consumers

Section 14: Creates State Advisory Committee on Mental Health Services; committee to consist of 23 members appointed by Governor: 1 regional governing board member, 1 regional administrator; 12 consumers or family members; 2 providers of services; 2 representatives from the State Dept of Ed including 1 from voc rehab; 3 from HHS representing mental health, social services and Medicaid; 1 from NE Commission on Law Enforcement and Criminal Justice; 1 from Housing Office in DED; committee responsible to State Behavioral Health Council and serve as state's mental health planning council

Section 15: Creates State Advisory Committee on Substance Abuse Services; 12 members appointed by Governor; provide advice and assistance to council and division relating to substance abuse services

Section 16: Creates State Advisory Committee on Problem Gambling and Addition Services; 12 members appointed by Governor; responsible to state Behavioral Health Council and provide advise and assistance on problem gambling and addition services; evaluate applications for funding from Compulsive Gamblers Assistance Fund and make recommendations relating to disbursement from fund

Section 17: Makes changes to current Compulsive Gamblers Assistance Fund statute language; moves all revenue and administrative functions to division for compulsive gambling services

Section 18: Creates Behavioral Health Oversight Commission of Legislature; Commission consists of not more than 20 members appointed by chair of Health and Human Services Committee and confirmed by a majority of the members of the committee; members shall include but not be limited to: representatives of the legislature, consumers and consumer advocacy organizations, behavioral health providers, communities of Norfolk and Hastings, state employees, regional behavioral health authorities, mental health boards and law enforcement; serve without compensation except expenses; commission shall oversee and support implementation of Act and administer funds appropriated by legislature from NE Health Care Cash Fund for such purpose; may employ staff, enter into contracts, establish and utilize task forces and subcommittees; terminates on June 30, 2008

Section 19: Division prepares and submits plan to Governor and Legislature on or before July 1, 2004; communicate regularly with Legislature's Oversight Commission and HHS Committee and provide reports and other information as requested; Commission shall review plan and provide recommendations to plan to Division and Committee no later than October 1, 2004; Division must provide written response to recommendations to Commission and Committee, including any proposed changes to plan, no later than December 1, 2004; Division must immediately provide to the Commission and Commission any proposed changes to plan as submitted and provide monthly reports during implementation of plan

Section 20: Behavioral Health Implementation Plan requirements; provide description of all completed current and proposed activities including selection and appointment of administrator, chief clinical officer, program administrator for consumer affairs and other staff within the division; implement appropriate administrative changes; describe and define role of office of consumer affairs, relationship between division and regional behavioral health authorities including scope of coordination and oversight; identify persons in regional centers for whom community-based serves would be appropriate, provide for funding and transition and reduction of admissions; establish criteria for closure of Norfolk and Hastings regional centers and for recruitment retention, training and support of regional center employees affected;

Section 20, continued – plan requirements: integrate all funding within system; establish priorities for funding, rates and reimbursement methodologies for providers and draft negotiated rulemaking policies and procedures for development and implementation of methodologies and set fees to be paid by consumers of services that do not exceed actual costs; access additional public and private funding including additional federal funding through Medicaid and establish programs and procedures for provisions of grants, loans and other assistance; facilitate activities of State Behavioral Health Council and advisory committees; promote research and education

Section 21: *Nebraska Mental Health Commitment Act consists of Sections 21-82.*

Section 22: Defines purpose of act is to provide treatment of persons who are mentally ill and dangerous

Sections 23 - 34: Definitions; defines administrator or other chief administrative officer; mental health board created by presiding judge in each district court judicial district for 4 year terms; mental health professional defined as a person licensed to practice medicine and surgery or psychology in Nebraska; mentally ill means having a psychiatric disorder involving severe or substantial impairment of a person's thought process, sensory input, mood balance, memory or ability to reason which substantially interferes with their ability to meet the ordinary demands of living or interferes with the safety and well being of others; mentally ill and dangerous person is a person who is mentally ill or substance dependent and because of such illness presents a substantial risk of serious harm to another person or to themselves; substance dependent means having a behavioral disorder that involves a maladaptive pattern of repeated use of controlled substances, illegal drugs or alcohol, usually resulting in increased tolerance, withdrawal, compulsive using behavior and including a cluster of cognitive, behavioral and physiological symptoms involving continued use

Section 35: Mental health board composition and appointment

Section 36: HHS to provide training to mental health boards and establish procedures

Section 37: Board hearing procedures refined

Section 38: Voluntary commitment process re-defined

Section 39: Revised Emergency Custody Guidelines; county cost payments

Section 40: Mental Health Professional EPC guidelines; certificate prepared no more than 24 hours after evaluation is completed; certificate requirements

Section 41: Outside individual's believing that another person is mentally ill and dangerous to communicate to county attorney; petition process

Section 42: County attorney petition may include EPC prior to commencement of mental health board hearing; either judge or mental health board chair can issue warrant directing sheriff to take custody

Section 43: Process after petition filing

Section 44: Mental Health Board hearing; treatment order

Section 45: State requirements; least restrictive environment; treatment order implementation

Section 46: After hearing process; subject cannot be retained in jail prior to commitment at facility per treatment plan; county to make appropriate arrangements

Section 47: if committed to Dept of HHS establishes procedures

Section 48: Inpatient treatment order delivered to sheriff of county; delivery of subject process;

Section 49: board estimates cost of conveying subject to treatment facility and submit to county clerk of county where person is located; clerk to issue order to county treasurer for payment

Section 50: Subject may appeal treatment order to district court

Section 51: Treatment order requirements

Section 52: Treatment plan preparer responsible for periodic reports to board

Section 53: Outpatient treatment procedures

Section 54: Mental Health board and outpatient treatment plan; hearing process; Determination as to treatment plan continuation, modification or ending

Section 55: Subject's counsel, guardian ability to review treatment plan

Section 56: Regional Center administrator responsibility and procedure to discharge involuntary subjects

Section 57: Notice for release from facility immediately forwarded to county attorney

Section 58: Inpatient and outpatient wording changes

Section 59: General statute updates

Section 60: General statute updates

Section 61: General statute updates

Section 62: General statute updates

Section 63: General statute updates

Section 64: hearing procedures; written notice to subject

Section 65: subject right to counsel



Section 66 - 75: General statute updates

Section 76: Mental Health board required to provide subject with written statements as to evidence used at hearing

Section 77 – 79: General statute updates

Section 80: Subject may waive rights to proceedings only if waiver is made personally and knowingly and voluntarily

Section 81: who can access records

Section 82: General statute update

Sections 83 – 125: CADAC Licensure Language (LB 1045)

Sections 126 – 144: General statute updates regarding mental health commitment language

Section 145: Section 1 – 17, 21-99, 102 – 144, 147 and 149 of the act become operative July 1, 2004. Other sections of act become operative on effective date – (upon signature of Governor)

Section 146: if any section is declared invalid or unconstitutional, declaration does not affect validity of remaining sections

Section 147: Original sections repealed

Section 148: Original sections repealed

Section 149: Sections outright repealed

Section 150: Emergency clause